

REMARKS

I. Introduction

Claims 40-58 and 102-107 are pending in this case.

The Examiner rejects claims 40-45, 47-49, 51-55, 57, and 102-107 under 35 U.S.C. § 102(e) as being anticipated by Huebsch et al. U.S. patent 5,853,422 (hereinafter "Huebsch"). The Examiner rejects claims 40, 42-49, 51-55, 57, 58, and 102-107 under 35 U.S.C. § 102(e) as being anticipated by Swanson et al. U.S. patent 6,113,612 (hereinafter Swanson). The Examiner rejects claim 58 under 35 U.S.C. § 103(a) as being unpatentable over Huebsch. The Examiner rejects claim 41 under 35 U.S.C. § 103(a) as being unpatentable over Swanson. The Examiner indicates that claims 50 and 56 would be allowable if rewritten in independent form.

Applicants have canceled claims 40-58 and 102-107 without prejudice. Applicants have added new claims 108-114.

II. The Examiner's Rejections

The Examiner previous rejections are moot in view of the canceled claims. However, applicants submit for the record that Swanson (which is commonly-assigned with the present application) is not prior art with respect to the present application under 35 U.S.C. § 102(e). In

particular, Swanson's filing date of November 6, 1998 is preceded by the present application's claim of priority to application No. 09/016,721, filed January 30, 1998.

III. New Claims 108-114

Applicants have added new independent claim 108 and new dependent claims 109-114. Support for new claims 108-114 can be found in applicants' originally-filed specification at, for example, page 15, line 17 to page 17, line 33 and FIGS. 9, 10, and 13. No new matter has been added.

Applicants' new independent claim 108 is directed toward a device for use in closing septal defects. In particular, two sets of fingers are mounted on a medial portion. The fingers are capable of extending substantially radially outward from the longitudinal axis of the medial portion and are spaced an axial distance apart from each other. The axial distance between the sets of fingers is capable of being changed.

Applicants respectfully submit that new independent claim 108 is patentable over the art^{\$\$\$\$} previously cited and of record in the present application

^{\$\$\$\$} Swanson is specifically excluded from the scope of applicants' statement regarding the previously cited art of record. Applicants have previously shown that Swanson is not prior art with respect to the present application.

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at least because none of the art shows or suggests a device in which the axial distance between two sets of fingers that are mounted on a medial portion is capable of being changed.

IV. Conclusion

In view of the foregoing, this application is in condition for allowance. Reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,



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